

House _____ Amendment NO. _____

Offered By

1 AMEND Senate Substitute for Senate Bill No. 476, Page 56, Section 644.056, Line 87, by inserting
2 after all of said section and line the following:

3
4 "644.145. 1. When issuing permits under this chapter that incorporate a new requirement for
5 discharges from publicly owned combined or separate sanitary or storm sewer systems or water or
6 sewer treatment works, or when enforcing provisions of this chapter or the Federal Water Pollution
7 Control Act, 33 U.S.C. Section 1251, et seq., pertaining to any portion of a publicly owned
8 combined or separate sanitary or storm sewer system or water or sewer treatment works, the
9 department of natural resources shall make a finding of affordability on the costs to be incurred and
10 the impact of any rate changes on ratepayers upon which to base such permits and decisions, to the
11 extent allowable under this chapter and the Federal Water Pollution Control Act.

12 2. (1) The department of natural resources shall not be required under this section to make a
13 finding of affordability when:

14 (a) Issuing collection system extension permits;

15 (b) Issuing National Pollution Discharge Elimination System operating permit renewals
16 which include no new environmental requirements; or

17 (c) The permit applicant certifies that the applicable requirements are affordable to
18 implement or otherwise waives the requirement for an affordability finding; however, at no time
19 shall the department require that any applicant certify, as a condition to approving any permit,
20 administrative or civil action, that a requirement, condition, or penalty is affordable.

21 (2) The exceptions provided under paragraph (c) of subdivision (1) of this subsection do not
22 apply when the community being served has less than three thousand three hundred residents.

23 3. When used in this chapter and in standards, rules and regulations promulgated pursuant to
24 this chapter, the following words and phrases mean:

25 (1) "Affordability", with respect to payment of a utility bill, a measure of whether an
26 individual customer or household with an income equal to [the] or lower [of] than the median
27 household income for their community [or the state of Missouri] can pay the bill without undue
28 hardship or unreasonable sacrifice in the essential lifestyle or spending patterns of the individual or
29 household, taking into consideration the criteria described in subsection 4 of this section;

30 (2) "Financial capability", the financial capability of a community to make investments
31 necessary to make water quality-related improvements;

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1 (3) "Finding of affordability", a department statement as to whether an individual or a
2 household receiving as income an amount equal to [the] or lower [of] than the median household
3 income for the applicant community [or the state of Missouri] would be required to make
4 unreasonable sacrifices in [their] the individual's or the household's essential lifestyle or spending
5 patterns or undergo hardships in order to make the projected monthly payments for sewer services.
6 The department shall make a statement that the proposed changes meet the definition of affordable,
7 or fail to meet the definition of affordable, or are implemented as a federal mandate regardless of
8 affordability.

9 4. The department of natural resources shall adopt procedures by which it will make
10 affordability findings that evaluate the affordability of permit requirements and enforcement actions
11 described in subsection 1 of this section, and may begin implementing such procedures prior to
12 promulgating implementing regulations. The commission shall have the authority to promulgate
13 rules to implement this section pursuant to chapters 536 and 644, and shall promulgate such rules as
14 soon as practicable. Affordability findings shall be based upon reasonably verifiable data and shall
15 include an assessment of affordability with respect to persons or entities affected. The department
16 shall offer the permittee an opportunity to review a draft affordability finding, and the permittee may
17 suggest changes and provide additional supporting information, subject to subsection 6 of this
18 section. The finding shall be based upon the following criteria:

19 (1) A community's financial capability and ability to raise or secure necessary funding;

20 (2) Affordability of pollution control options for the individuals or households at or below
21 the median household income level of the community;

22 (3) An evaluation of the overall costs and environmental benefits of the control technologies;

23 (4) Inclusion of ongoing costs of operating and maintaining the existing wastewater
24 collection and treatment system, including payments on outstanding debts for wastewater collection
25 and treatment systems when calculating projected rates;

26 (5) An inclusion of ways to reduce economic impacts on distressed populations in the
27 community, including but not limited to low- and fixed-income populations. This requirement
28 includes but is not limited to:

29 (a) Allowing adequate time in implementation schedules to mitigate potential adverse
30 impacts on distressed populations resulting from the costs of the improvements and taking into
31 consideration local community economic considerations; and

32 (b) Allowing for reasonable accommodations for regulated entities when inflexible standards
33 and fines would impose a disproportionate financial hardship in light of the environmental benefits
34 to be gained;

35 (6) An assessment of other community investments and operating costs relating to
36 environmental improvements and public health protection;

37 (7) An assessment of factors set forth in the United States Environmental Protection
38 Agency's guidance, including but not limited to the "Combined Sewer Overflow Guidance for
39 Financial Capability Assessment and Schedule Development" that may ease the cost burdens of
40 implementing wet weather control plans, including but not limited to small system considerations,
41 the attainability of water quality standards, and the development of wet weather standards; and

1 (8) An assessment of any other relevant local community economic condition.

2 5. Prescriptive formulas and measures used in determining financial capability, affordability,
3 and thresholds for expenditure, such as median household income, should not be considered to be the
4 only indicator of a community's ability to implement control technology and shall be viewed in the
5 context of other economic conditions rather than as a threshold to be achieved.

6 6. Reasonable time spent preparing draft affordability findings, allowing permittees to
7 review draft affordability findings or draft permits, or revising draft affordability findings, shall be
8 allowed in addition to the department's deadlines for making permitting decisions pursuant to section
9 644.051.

10 7. If the department of natural resources fails to make a finding of affordability where
11 required by this section, then the resulting permit or decision shall be null, void and unenforceable.

12 8. The department of natural resources' findings under this section may be appealed to the
13 commission pursuant to subsection 6 of section 644.051.

14 9. The department shall file an annual report by the beginning of the fiscal year with the
15 governor, the speaker of the house of representatives, the president pro tempore of the senate, and the
16 chairs of the committees in both houses having primary jurisdiction over natural resource issues
17 showing at least the following information on the findings of affordability completed in the previous
18 calendar year:

19 (1) The total number of findings of affordability issued by the department, those categorized
20 as affordable, those categorized as not meeting the definition of affordable, and those implemented
21 as a federal mandate regardless of affordability;

22 (2) The average increase in sewer rates both in dollars and percentage for all findings found
23 to be affordable;

24 (3) The average increase in sewer rates as a percentage of median house income in the
25 communities for those findings determined to be affordable and a separate calculation of average
26 increases in sewer rates for those found not to meet the definition of affordable;

27 (4) A list of all the permit holders receiving findings, and for each permittee the following
28 data taken from the finding of affordability shall be listed:

29 (a) Current and projected monthly residential sewer rates in dollars;

30 (b) Projected monthly residential sewer rates as a percentage of median [house] household
31 income;

32 (c) Percentage of households at or below the state poverty rate."; and
33

34 Further amend said bill by amending the title, enacting clause, and intersectional references
35 accordingly.